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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,193	12/15/2003	Andrew Swick	1789-11801 (Tech ID#23031	4363
23505	7590	05/31/2006	EXAMINER	
CONLEY ROSE, P.C. P. O. BOX 3267 HOUSTON, TX 77253-3267			WARREN, DAVID S	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Drawings

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

Claim Objections

2. Claim 28 is objected to because of the following informalities: The use of "some voiced tone" as a standard for comparison is confusing since any tone will be close to "some voiced tone." The Examiner recommends that "some voiced tone" be amended to "a predetermined tone." Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 25 contains the trademark/trade name METLAB. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe computer software program and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 101

5. Claims 1 - 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as *nonstatutory functional descriptive material*. The Applicant is referred to MPEP 2106 IV B 1 (a).


Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Milne ('087) and Wright ('713) disclose the use of an audio library containing transfer functions. The patent to Shteinhaus ('074) discloses the use of harmonic components used to determine transfer functions between two (or more) sets of data. The documents to Green (2005/0022987) and Markow (2004/0205403) disclose the use of comparing audio profiles.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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